SUPREME COURT OF THE UNITED STATES.

No. 400.

JOHN NEWMAN, PLAINTIFF IN ERROR,

vs.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

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2 Pleas and proceedings before the district court of Polk county, Iowa, at the January term thereof, on the 8th day of January, 1866. The Hon. Charles C. Nourse, judge of the fifth judicial district court, presiding.

STATE OF IOWA }
vs.
JOHN NEWMAN. }

3 Be it remembered that heretofore, to wit, on the 27th day of July, A. D. 1865, there was filed in the office of the clerk of the district court for said county an indictment in words and figures following, to wit:

Indictment.

STATE OF IOWA }
vs. } Indictment for keeping a nuisance.
JOHN NEWMAN. }

The grand jury of the county of Polk, and in the State of Iowa, being legally impanelled in the name and by the authority of the State of Iowa, accuse John Newman of the crime of keeping a nuisance committed as follows:

The said John Newman, on the first day of A. D. 1865, in the city of Des Moines, at the county of Polk aforesaid, and on each and every day from that time until the finding of this indictment, did wilfully and unlawfully establish, continue, and use a building and place for the purpose, and with the intent of unlawfully owning, keeping, and selling intoxicating liquors within the State of Iowa, contrary to law, and then and there did sell gin, rum, brandy, whiskey, and
4 other intoxicating liquors, contrary to law, to the great injury and common nuisance of all the good people of the said county of Polk, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Iowa.

H. W. MAXWELL,
Dist. Att'y of the 5th Judical District, Iowa.

Filing of indct.

The within indictment was presented to the district court of Polk county, Iowa, in open court by the foreman of the grand jury, in the presence of all the grand jurors, and filed by the clerk of said court on the 27th day of July, 1865.

H. H. GRIFFITHS,
Clerk of the District Court of Polk County, Iowa.

Order for warrant.

I hereby order a bench warrant to issue forthwith on the within indictment for the arrest of said defendant, and his bail is fixed at three hundred dollars.

W. LOUGHRIDGE, *Judge.*

And afterwards, to wit, on the 1st day of August, 1865, there was filed in the office of said clerk a plea of "not guilty," with reservations, in words and figures following, to wit:

Plea of not guilty.

In the district court, Polk county, Iowa, July term, A. D. 1865.

STATE OF IOWA }
vs.
JOHN NEWMAN. }

Now comes the defendant and pleads not guilty, especially however saving and reserving the right to withdraw this plea and attack the indictment herein by demurrer, or motion to set aside, if upon examination the same shall be deemed defective and open to objection.

PHILLIPS, FINCH & ELLWOOD,
Attorneys for Defendant.

And afterwards, to wit, on the 8th day of August, A. D. 1865, there was filed in the office of said clerk a motion for continuance, in words and and figures following, to wit:

Motion and aff'd't for continuance.

STATE OF IOWA }
vs.
JOHN NEWMAN. }

STATE OF IOWA, *Polk County, ss:*

John Newman, of said county, being duly sworn, do depose and say that I am the defendant in the above-entitled action; that I, a defendant herein, am indicted for a nuisance under the 8th section of the act of the general assembly of the State of Iowa, entitled "An act for the suppression of intemperance," which took effect July 1st, 1855, that the indictment against me herein was found at the present term of this court, and that I was arrested and arraigned on a bench warrant some four or five days since, and a day or two after the indictment was filed.

And I do further depose and say that I was not in custody or on bail, nor had I deposited money instead of bail, when this indictment was found against me; nor had I prior to the present time been arrested and held to bail for the said offence.

And I do further depose and say that the actions criminal, ordinary, and equitable, triable at the present term of the court, were were duly arranged upon the calendar or docket prepared by the clerk of this court, as provided and required by sections 3,005 of the revision of 1860, in the order therein specified; that the court at this term proceeded to try and dispose of the said causes so arranged in their order and tried, continued, and disposed of all the criminal cases on said docket, as required by section 3,006,

with the exception of two or three cases, which, by consent and direction of the court, were set down for trial at a subsequent day in the term; that after the court had so disposed of the causes set down on the said calendar, prepared by the said clerk as criminal causes as aforesaid, the court then entered upon the trial of the civil docket or calendar, and tried and disposed of several jury causes, and received several verdicts, and entered judgments thereon.

And I do further depose and say that I have, as I verily believe, a good and substantial defence to this action on the merits; that I have testimony material to my successful defence on the trial hereof which I have not been, and am not now, able to procure at this term of this court, unless I desire a trial thereof. I have made no preparations for this trial, and am utterly unprepared to try this cause at this term of this court, but desire a continuance of the same in order
8 to enable me to prepare for the trial of the same; and I hereby offer good and ample security for my appearance to answer to the indictment herein at the next term of this court, at which time I expect to be prepared for the trial hereof.

Therefore, for the reasons appearing in this affidavit, I respectfully ask for a continuance of this action until the next term of this court, relying on the facts above stated and the provisions of sections 3,005, 3,006, 4,723, and 4,725.

JOHN NEWMAN.

Subscribed and sworn to by John Newman before me, this 8th day of August, 1865.

[SEAL.]

A. MORRIS,
Notary Public, Polk Co., Iowa.

And afterwards, to wit, on the 8th day of January, A. D. 1866, there was filed in the office of said clerk a "notice to introduce" witnesses, in words and figures following, to wit:

Notice to introduce witnesses.

THE STATE OF IOWA
vs.
JOHN NEWMAN.
} Notice to introduce witnesses.

The said defendant, John Newman, is hereby notified that on the trial of the above-entitled cause the plaintiff, the State of
9 Iowa, will introduce in support of the indictment the following named witnesses, to wit:

1st. Samuel Noel; residence, Des Moines, Polk co., Iowa; occupation, city marshal.

II. Townsend Hall; residence, Des Moines, Polk co., Iowa; occupation, laborer.

III. W. A. Hunt; residence, Des Moines, Polk co., Iowa; occupation, constable; and

IV. John Morris; residence, Des Moines, Polk co., Iowa; occupation, tailor.

All whom are expected to testify that the defendant, John Newman, in Des Moines, in said county, on the 1st day of June, 1865, and from that time until the 27th day of July, 1865, did continue and use a building for the purpose of unlawfully selling intoxicating liquors therein contrary to law.

H. W. MAXWELL,
District Attorney of the 5th Judicial District.

Service of notice.

Received the within notice on the 4th day of January, 1866, and on the same day I served the same on the within-named defendant, John Newman, by reading to and delivering him a true copy of the same at his place of business in Des Moines, Polk county, Iowa.

NATH'L McCALLA,
Sheriff Polk Co., Iowa.
By J. BAUSMAN, *Deputy*.

And afterwards, to wit, on the 11th day of January, 1866, the same being the 4th day of the January term of said court, the following proceedings were had:

10 *Jury impanelled.*

STATE OF IOWA
vs. } 161 crim.
JOHN NEWMAN.

Now on this day this cause came on to be heard, the plaintiff appeared by Hon. H. W. Maxwell, dist. attorney, and the defendant, by his attorneys, Phillips & Phillips, and then came a jury of twelve good and lawful men, to wit: David Hager, R. C. McMillan, W. H. Patchin, George Robinson, John H. Morris, W. F. Kenyon, Lemon Bennett, R. C. McDaniel, W. B. Walker, G. W. Barngrover, A. C. Holmes, and M. A. Sheppard, who being duly sworn to well and truly try the issues in this cause, and hearing the evidence, the argument of counsel, and the instructions of the court, retired in charge of a sworn bailiff to consider of their verdict, and after a time spent in deliberation, returned into court with the following verdict, to wit:

We, the jury, find the defendant "guilty" as charged in the indictment, whereupon said jury was discharged.

11 And afterwards, to wit, on the 15th day of January, 1866, the same being the 7th day of the January term of said court, the following proceedings were had, to wit:

STATE OF IOWA
vs. } 161 crim.
JOHN NEWMAN.

Now comes Phillips and Phillips, attorney for defendant, and files motion in arrest of judgment and for new trial, which is overruled by

the court, to which defendant excepts, and files bill of exceptions, duly settled signed by the court.

And afterwards, to wit, on the same day there was filed in the office of said clerk a bill of exceptions, in the words and figures following, to wit:

Bill of exceptions.

In the district court of Polk county, Iowa, January term, 1866.

STATE OF IOWA }
vs.
JOHN NEWMAN. }

Be it remembered that on the trial of this cause, and after the State had rested its case, the State claiming the existence of the alleged nuisance to be in the city of Des Moines, Polk co., Iowa, the defendant offered in evidence a license duly executed by
12 the United States to the defendant, which license is in the words and figures following, to wit:

U. S. license, No. 187.

United States internal revenue license, in force from May, 1865, expires May 1st, 1866.

To all whom it may concern:

This license is granted to John Newman, of the city of Des Moines, in the county of Polk and State of Iowa, to carry on the business or occupation of retail liquor dealer at No. street, in the aforementioned place, he having paid the tax of twenty-five dollars therefor, conformably to the provisions of the excise laws of the, United States. This license to be in force until the 1st day of May, 1866, provided the holder shall conform to the requirements of said laws, and to such other law or laws as are or may hereafter be in this behalf enacted.

Given under my hand and seal at Des Moines, this 11th day of September, A. D. 1865.

[SEAL]

S. HAINES,
Collector of the 5th Collection District in the State of Iowa.
A. BOWERS, *D'pt.*

Court refuses to admit evidence.

That the court excluded such certificate or license and refused to permit the defendant to give the same in evidence to the jury,
13 to which ruling of the court and excluding of such evidence the defendant then and there at the time excepted, and ask that the same may be made appear from record, and it is so ordered by the court; that thereupon the court, upon its own motion, gave the jury the following instructions, in words and figures following, to wit:

Instructions to jury.

THE STATE OF IOWA
vs.
JOHN NEWMAN.

The defendant is charged with keeping intoxicating liquors for sale at a place named in the indictment contrary to law.

The law makes the establishing and keeping such a place for such a purpose and keeping intoxicating liquors therein for sale a nuisance.

The sale of intoxicating liquors contrary to law at any time between the date named in the indictment, is presumptive evidence of the commission of the offence, and unless such presumption is rebutted such evidence may be sufficient for a conviction.

The defendant must be proved guilty beyond a reasonable doubt. If from the evidence you are fully and clearly satisfied that the defendant kept intoxicating liquors for sale as charged and have
14 no reasonable doubt thereof, you will find him guilty, otherwise he should be acquitted.

C. C. NOURSE, *Judge.*

That the foregoing is all the instructions given to the jury, and that to the giving of each and every of the said instructions the defendant then and there excepted at the time of giving the same.

That upon the return by the jury of their verdict into court and before judgment, the defendant filed his motion in arrest of judgment and for a new trial, in the words and figures following, to wit:

Motion for new trial.

In the district court of Polk county, Iowa, January term, 1866.

THE STATE OF IOWA
vs.
JOHN NEWMAN.

Comes now the defendant and moves the court in arrest of judgment and for a new trial, and as cause of such motion shows to the court the following, to wit:

I. The verdict is contrary to law, and is not sustained by the evidence.

II. The court erred in not permitting defendant to offer in evidence to the jury the license from the United States to him as
15 a retail liquor dealer, and other evidence offered.

III. The court erred in giving the instructions to the jury given on its own motion.

IV. The laws of the State of Iowa, upon which and under which the indictment in this case is found and upon which the same is based, is in conflict with the Constitution of the United States and the acts of Congress, and is in conflict with the constitution of the State of Iowa, and is void.

PHILLIPS & PHILLIPS,
Att'ys Def't.

Which said motion in arrest and for new trial was by the court overruled, to which ruling and the overruling of said motion the defendant then and there duly excepted, and asks that all of the foregoing facts and rulings of the court may be made part of the record in this case by this his bill of exceptions, and it is so ordered by the court.

C. C. NOURSE, *Judge.*

And afterwards, to wit, on the 10th day of January, A. D. 1866, the same being the 10th day of the January term of said court, the following proceedings were had:

Judgment.

16 STATE OF IOWA *vs.* JOHN NEWMAN. } 161 crim.

Now on this day this cause came on for final hearing and sentence, the defendant being present in person in open court, and the court having inspected the indictment, the verdict of the jury, and all the pleadings herein, doth find that the defendant, John Newman, is guilty as charged in the indictment, and doth sentence him to pay a fine of two hundred dollars and the costs of this prosecution, and stand committed until paid, at the rate of $3 33 per day.

It is therefore ordered and adjudged by the court that the plaintiff have and recover of the defendant, John Newman, two hundred dollars and the costs of this action, taxed at forty-four dollars twenty cents, and that execution issue therefor.

Signed by C. C. Nourse, judge, at the end of the day's proceedings.

And afterwards, to wit, on the 19th day of January, 1866, an appeal bond was filed in the office of said clerk, in words and figures following, to wit:

Bond of appeal.

17 Whereas at the July term of the district court of Polk co., Iowa, an indictment was found against John Newman, accusing the said John Newman of keeping a nuisance in Des Moines, Iowa.

And whereas at the January term of said district court, 1866, the said John Newman was tried and found guilty as charged in the said indictment, and on the 18th day of January, A. D. 1866, was adjudged guilty, to pay a fine of two hundred dollars, and to stand committed until the same was paid.

And whereas the said John Newman has appealed from said judgment to the supreme court of Iowa—

Now we, John Newman, by occupation a saloon-keeper, residing in Des Moines, Iowa, and P. Casilly, by occupation a merchant, residing in Des Moines, hereby undertake that the said John Newman will pay said fine, or such part of it as the supreme court may direct,

and in all respects abide the orders and judgment of the supreme court upon appeal, or if he fail to perform either of these conditions, that we will pay the State of Iowa the sum of four hundred dollars.

Signed this 18th day of January, 1866.

JONH NEWMAN.
P. CASSILLY.

18 STATE OF IOWA, *Polk County:*

I, P. Cassilly, after being duly sworn, on oath state that I am worth the sum of four hundred dollars in property over and above all my liabilities, and in property not exempt from execution.

P. CASSILLY.

Sworn and subscribed to by P. Cassilly, before me, this 18th day of January, 1866.

H. H. GRIFFITHS, *Clerk.*

Acknowledged before and accepted by me at Des Moines, in the township of Des Moines, in the county of Polk, Iowa, this 18th day of January, 1866.

H. H. GRIFFITHS, *Clerk.*

And afterwards, to wit, on the 11th day of May, 1866, there was filed in the office of said clerk a notice of appeal to defendant, in words and figures following, to wit:

Notice of appeal to clerk.

In the district court of Polk county, Iowa.

THE STATE OF IOWA }
vs. }
JOHN NEWMAN. }

To the clerk of the district court of Polk county, Iowa:

You are hereby notified that the defendant in the above-
19 entitled cause has appealed from the judgment rendered against him at the trial of said cause, in the district court of Polk county, to the supreme court of the State of Iowa.

You will therefore certify to the clerk of the supreme court before the next session in June, a full and complete copy of the whole record in the case.

FINCH, CLARK & RICE.
Att'ys for Defendant.

Service accepted May 11th, 1866.

H. H. GRIFFITHS, *Clerk.*

And afterwards, to wit, on the 19th day of May, 1866, there was filed in the office of said clerk a notice of appeal to defendant, in words and figures following, to wit:

In the district court of Polk county, Iowa.

THE STATE OF IOWA
vs.
JOHN NEWMAN.

To the district attorney of the 5th judicial district:

You are hereby notified that the defendant in the above-entitled cause has appealed from the judgment rendered against him at the trial of said cause in the district court of Polk county, to the supreme court of the State of Iowa, and that the same will be for hearing at the next session thereof.

FINCH, CLARK & RICE,
Atty's for Deft.

20 I accept service of this notice, and waive a copy this 17th day of May, 1866.

H. W. MAXWELL,
Dist. Att'y 5th District.

STATE OF IOWA, *Polk County:*

I, H. H. Griffiths, clerk of the district court of said county, do hereby certify that the above and foregoing is a true, full, and complete transcript of the cause wherein the State of Iowa was the plaintiff and John Newman was the defendant, as full, true, and complete as the same appears of record in my office.

Witness my hand and the seal of said court, this 23d day of May, 1866.

[SEAL.] H. H. GRIFFITHS, *Clerk.*

District court costs	$44 20
Two transcripts	11 00
Two certificates	1 10
	56 30

[U. S. rev., 5 cents.]

21 Be it remembered that at a supreme court begun and held at the city of Des Moines, Iowa, on the 14th day of June, A. D. 1866, present, Hon. Ralph P. Lowe, chief justice, Hon. Jno. F. Dillon, Hon. C. C. Cole, Hon. Geo. G. Wright, judges, the following was entered of record, to wit:

THE STATE OF IOWA
against
JOHN NEWMAN, app'l't. } 2,488. Appeal from Polk co.

This day this cause, coming on for hearing, was submitted to the consideration of the court.

And afterwards, to wit, on the 16th day of June, 1866, the following was entered of record, to wit:

THE STATE OF IOWA
against
JOHN NEWMAN, app'l't. } 2,448. Appeal from Polk co.

This cause having been submitted to the consideration of the court, and the court being now sufficiently advised in the
22 premises, find that there is no error in the judgment and proceedings of the court below, and file their written opinion. It is therefore considered and adjudged by the court that the judgment of the court below be affirmed, and that the State of Iowa have and recover of and from the appellant the sum of two hundred dollars as a fine, together with the costs of the court below taxed at $, and the costs of this court taxed at $, and that execution issue therefor, and that he stand committed to the county jail of Polk county at the rate of $3 33-100 per day until said fine and costs are fully paid, and that a certified copy of this judgment be furnished the sheriff of Polk county by the clerk of this court, which shall be his sufficient warrant to arrest and commit the said John Newman to the jail of Polk county, and to stand so committed in accordance with this judgment; and the said John Newman, being three times called, comes not, but makes default. It is therefore further ordered and adjudged that default be entered in favor of the State of Iowa against the said John Newman, and the undertaking of P. Cassilly, the bail in this case, is forfeited.

23 And afterwards, to wit, on the 21st day of June, 1866, the following was entered of record, to wit:

THE STATE OF IOWA
against
JOHN NEWMAN, app'l't. } 2,448. Appeal from Polk co.

In this case it is ordered that in case an appeal is taken to the U. S. Supreme Court, that the bail be $400, to be approved by the clerk of this court.

24 State of Iowa, supreme court.

I, Lewis Kinsey, clerk of the supreme court of Iowa, do hereby certify that the foregoing pages, from 21 to 23, inc., contain all the journal entries in said cause in the supreme court of Iowa, as full, true, and complete as the same appears of record in said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Des Moines, this 16th day of November, A. D. 1866.

[L. S.] LEWIS KINSEY, *Clerk.*

[5-ct. in. rev. stamp, cancelled.]

25 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the supreme court of the State of Iowa, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said supreme court of the State

of Iowa, before you, between the State of Iowa and John Newman, manifest error hath happened to the great damage of the said John Newman, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday in December next, in said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of
26 right and according to the law and custom of the United States should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this fourth day of December, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United States the 89th.

[SEAL.] W. G. WOODWARD,
Clerk of the United States Circuit Court for the District of Iowa.

[50 ct. in. rev. stamp, cancelled.]

The within writ of error allowed this 25th day of June, 1866.

R. P. LOWE,
Chief Justice of the Supreme Court of the State of Iowa.

Filed June 25, '66.

L. KINSEY, *Clk.*

27 Supreme court of the State of Iowa.

THE STATE OF IOWA
vs.
JOHN NEWMAN.

I, the undersigned, chief justice of the supreme court of the State of Iowa, do hereby certify that in the above-entitled cause, and upon the hearing and decision thereof in this court, there was drawn in question the validity of the statute of the State of Iowa, entitled "An act for the suppression of intemperance," passed by the general assembly of said State, and which took effect July 1, 1855, and especially the validity of the 8th section of said act, on the ground that the said act, and especially the 8th section thereof, were repugnant to and in conflict with the Constitution and laws of the United States, and that the decision of this court was in favor of the validity of said statute, and of the 8th section thereof.

And I do also further certify, that in the above-entitled cause, and in the hearing and decision thereof in this court, there was drawn in question the validity of the right, privilege, and authority of the defendant, John Newman, to keep intoxicating liquors, either imported

or domestic, with intent to sell the same under a license granted to him by the government of the United States, pursuant to and in compliance with the provisions of the act of Congress entitled "An act to provide internal revenue to support the government,
28 and to pay interest on the public debt," approved July 1, 1862, and the acts amendatory thereof, and that the decision of this court was against the validity of such right, privilege, or authority under such license.

And I further certify that the said supreme court of the State of Iowa have ordered this certificate to be made a part of the record in the above-entitled cause.

In witness whereof I have hereto set my *my* hand and caused the seal of the supreme court of the said State to be affixed, at Des Moines, in said county, this 26th day of June, A. D. 1866.

[L. S.] R. P. LOWE,

Chief Justice of the Supreme Court of the State of Iowa.

Filed June 26th, 1866.

L. KINSEY, *Cl'k.*

29 STATE OF IOWA, *Supreme Court:*

I, Lewis Kinsey, clerk of the supreme court of Iowa, do hereby certify that the foregoing pages contain a full, true, and complete copy of the transcript filed in the supreme court of Iowa, in the cause entitled the State of Iowa against John Newman, as full, true, and complete as the original now remains on file in my office. I further certify that I have attached hereunto the original writ of error directed to the judges of the said supreme court, and also the certificate of the chief justice of said court.

In witness whereof I have hereunto affixed the seal of said court and my official signature, at Des Moines, this 24th day of October, A. D. 1866.

[L. S.] LEWIS KINSEY, *Clerk.*

[5-c. in. rev. stamp, cancelled.]

30 United States of America to the State of Iowa, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, in the District of Columbia, on the first Monday in December next, pursuant to a writ of error filed in the office of the clerk of the supreme court of the State of Iowa, wherein John Newman is plaintiff, and you are defendant in error, to show cause, if any there be, why judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Ralph P. Lowe, chief justice of the supreme court of the State of Iowa, this 26th day of October, in the year of our Lord 1866.

R. P. LOWE,

Chief Justice of the Supreme Court of the State of Iowa.

31 STATE OF IOWA, *Polk County:*

I, J. M. Walker, being duly sworn, depose and say that I am United States marshal of Iowa; that the within citation came into my hands on the 27th day of October, 1866, and that I served the same by reading the same to W. M. Stone, governor of the State of Iowa, and delivering to him a true copy of the same, at Knoxville, Iowa, on the 29th day of the same month, and by reading the same to F. E. Bissill, att'y gen'l of said State, at Dubuque, in said State, on the 1st day of November, 1866; and at the respective times of such service I did exhibit to gov. and att'y gen'l the original hereof.

J. M. WALKER,
U. S. Marshal of Iowa.

Subscribed and sworn to by J. M. Walker, before me, on this 1st day of November, 1866.

JOHN D. RIVES,
Notary Public, Polk Co., Iowa.

Marshal's fees:

Mileage	$18 42
Service	4 00
	22 42